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78-0545/8

25 MAR 1978

Executive Registry
78-8409/3

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : The President's Civil Service Reform Proposals

REFERENCE : Memo for DCI fr Asst to the President for
Reorganization, dtd 7 Mar 78

1. Action Requested: None, for your information only.

2. Background: In mid 1977, Dr. Alan Campbell, Chairman of the Civil Service Commission, established Working Groups to undertake a comprehensive study of the Federal Personnel System. The objectives were to examine and review all aspects of personnel management in the Federal Government - the basic policies, the systems for carrying out personnel management functions, the organization for personnel management and similar matters and to recommend regulatory legislative and organizational solutions. The proposals generated by these groups were distributed to over 700 federal agencies, including CIA, and public interest organizations for review and comment. The goal was to solicit a broad spectrum of viewpoints from organizations and individuals.

3. Representatives from our Office of Personnel participated in meetings at the Commission and responded in writing on the Working Group's recommendations which we felt could have an impact on CIA. A total of 125 recommendations were made by the Reorganization Project in December 1977, followed immediately by a draft of "The Civil Service Reform Bill of 1978". The Bill contained some seventy proposed revisions for Civil Service change, requiring Congressional action before implementation.

4. On 17 February 1978, the Office of Legislative Counsel sent the Agency's official response to this proposed legislation to the Office of Management and Budget (Tab A). The thrust of our

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response was to articulate the provisions which would give CIA, as an Intelligence Organization, difficulty in carrying out its charter. The Agency also requested an exemption from the proposed legislation.

5. The revised copy of the Bill as introduced to the Congress (S-2640 and HR-11280) does not appear to grant the Agency the full exemption necessary as originally intended by OMB and CSC. Our Legislative Counsel communicated with OMB again on 20 March regarding this matter (Tab B). Representatives from OGC and OLC also attended a meeting on 21 March 1978 with members of the CSC Legal Staff in an attempt to resolve remaining problems. A memorandum on this meeting is currently being prepared by OGC and OLC. Continued close liaison with OMB and CSC will be maintained to insure full exemption.

6. In summary, the Agency has been "tracking" the Civil Service Reform Proposals since their inception and will continue to closely follow all aspects of the Reform Bill.



John F. Blake

STATINTL

Atts

Approved For Release 2002/11/22 : CIA-RDP81-00142R000400010023-5

TAB
A

Approved For Release 2002/11/22 : CIA-RDP81-00142R000400010023-5

Office of Legislative Counsel

17 February 1978

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This letter is in response to your request for our views on the Civil Service Commission draft bill, the "Comprehensive Civil Service Reform Act."

CIA has serious problems with the substance of this legislation. Numerous provisions conflict with present CIA authorities. Its detailed disclosure requirements, as well as its inadequate exclusions and refusal to recognize the Director of Central Intelligence's termination authority or CIA excepted status could pose serious security problems for the Agency and compromise the Director of Central Intelligence's ability to fulfill his statutory responsibilities to protect sources and methods. We therefore ask to be excluded from the provisions of this legislation.

Enclosed you will find our specific comments and recommendations of the draft legislation, as well as on the draft reorganization plan. We appreciate this opportunity to present our views to you. In view of the short period provided to review this complex paper, we may want to provide additional views based on further study.

Sincerely,



Acting Legislative Counsel

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Approved For Release 2002/11/22 : CIA-RDP81-00142R000400010023-5
VIEWS OF THE CENTRAL INTELLIGENCE AGENCY ON
THE COMPREHENSIVE CIVIL SERVICE REFORM ACT

Title I prescribes rigid merit system principles that shall apply to all departments and agencies in the Executive Branch, including the CIA. The eight merit system principles concern, for example, personnel recruitment, performance evaluation and grievance procedures.

As described in Title I, the merit system principles would conflict with the exempted status of the CIA under 50 U.S.C. 403j. This section has consistently been interpreted as providing CIA with a statutory exemption from the competitive service in order to allow the Agency greater flexibility in performing its functions. Furthermore, the Agency's excepted status is not governed by Civil Service Commission excepted position schedules.

The rigid merit system principles in Title I of the proposed Civil Service Reform Act would hamper CIA in its staffing flexibility and requirements. For example, section 202(1) provides that selection and advancement of applicants must be determined through "fair and open competition." Also, section 202(2) would require CIA to give equal consideration to all applicants, regardless of political affiliations and national origins, a procedure which could conflict with necessary security considerations.

Moreover, section 205 provides that the Government Accounting Office would conduct audits and reviews to assure compliance with the laws, Executive Orders, directives, rules and regulations governing employment in the Executive Branch. It would also assess the effectiveness and systematic soundness of Federal personnel management.

This Agency is not subject to audit or oversight by the GAO, a position based on security considerations and the need to protect intelligence sources and methods. The provisions in section 205 of the proposed Plan, however, would authorize an entity outside the Agency to insure its compliance with certain laws and regulations. This situation would conflict with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods, particularly the organization, functions and other personnel-related matters of the Agency from disclosure, as provided by 50 U.S.C. 403(d)(3) and 403g.

The provisions of Title II relating to protection of employee rights, present the Agency with many difficulties. Many of the provisions interfere with, impair, or are completely inconsistent with present CIA statutory authorities. Section 202 would grant subpoena power to the proposed Merit Systems Protection Board (Merit Board), its Special Counsel and other designated personnel. This power could be utilized by the Special Counsel in the course of a whistle-blowing investigation. By the authority of section 204, the Special Counsel could also freeze any personnel action with substantial economic impact on the complaining employee until an investigation concerning that employee is complete. The Agency head would be required to take whatever corrective action the Special Counsel deemed necessary, if a reprisal against an employee was found to have occurred because of the employee's disclosure of information relating to a violation of law or regulation. If the action was not carried out, section 207 provides that the Special Counsel could take the matter before the Merit Board for final determination. These procedures would conflict with the authority of the Director of Central Intelligence to terminate employees when in the interests of the United States (50 U.S.C. 403(c)), with the Director's mandate to prevent disclosure of intelligence sources and methods (50 U.S.C. 403(d)(3) and 403g), with the role of the Intelligence Oversight Board (section 3-1 of Executive Order 12035), and with CIA's excepted personnel system (50 U.S.C. 403j).

Under section 205 performance appraisal systems must be established by certain agencies for certain employees. The appraisal systems must also conform to Office of Personnel Management (OPM) regulations. However, there is a discrepancy between the language of the legislation and that of the report concerning the agencies covered by the legislation. The report contends that the Tennessee Valley Authority is included, while the legislation states that it is excluded. The report also contends that CIA, unlike the Foreign Service, is not meant to be excluded, though the legislation allows for such an exclusion by OPM regulation. Even so, the thrust of this section would be to subject CIA performance appraisals to OPM control. This would conflict with the aforementioned 50 U.S.C. 403(d)(3), 50 U.S.C. 403g and 50 U.S.C. 403j.

The procedures in section 205 of the proposed bill, pertaining to demotions or dismissals based on unacceptable performance, include a requirement for 30 days advance notice, and the right to reply and to representation. The procedures also provide the affected employee the right to appeal the matter to the Merit Board for final determination pursuant to section 207. These features could conflict with the DCI's termination authority (50 U.S.C. 403(c)), with the Director's mandate to prevent disclosure of sources and methods (50 U.S.C. 403(d)(3) and 403g) and with the Agency's statutory exemption from the competitive service.

Section 206(a) deals with adverse actions designed to promote the efficiency of the service, including removals, suspensions and furloughs for 30 days or less. There are two sets of adverse action procedures. When the suspension is for more than 30 days, removals and other adverse actions must be processed under procedures similar to those in section 205. CIA would be covered by those procedures only to the extent that it would employ preference eligibles. When the suspension is for 30 days or less, less rigorous notice, right-to-reply and representation procedures would be required for all CIA employees. CIA employees covered by either set of adverse actions procedures could not be excluded from these procedures because both exclusion provisions use the "confidential or policy determining" language of Schedule C, which is inapplicable to CIA, as their criteria. Thus, these procedures would tend to create the same statutory conflicts created by the section 205 procedures. Moreover, it should be noted that while adverse action by CIA management must conform to the aforementioned procedures, the procedures curiously exclude from coverage national security adverse actions taken under 5 U.S.C. 7532.

In accordance with section 207, any matter to be decided by the Merit Board would be processed under regulations established by the Merit Board and the decision would be reviewed by the U.S. Court of Claims or a U.S. Court of Appeals. Such practices would also conflict with the aforementioned statutes giving the Director the authority to terminate employment, the responsibility to protect intelligence sources and methods and this Agency's exemption from the competitive services.

Title III, concerning staffing, provides for the examination, selection and retaining of Federal employees. The Agency fully supports the provisions of section 305 which would enable the Agency to equip an employee with the skills necessary to fill a different position or to acquire new skills needed for a position in another agency. Overall, this would appear to be of benefit to the Government by retaining competent employees in the Federal service. We recommend that a provision be added providing for the placement of a RIF employee within his or her own Agency as a result of additional training.

Section 308 would require OPM approval of a special early retirement authority. Presently, CIA has authority to declare surplus situations regarding early retirement without obtaining Civil Service Commission approval. If enacted, this section would conflict with the DCI's authority to protect the numbers and functions of employees from disclosure (50 U.S.C. 403g).

Title IV would establish a Senior Executive Service (SES) comprising all managerial and supervisory positions correctly classified GS-16 through Executive Schedule IV.

Section 402(b) would give the Office of Personnel Management (OPM) authority to prescribe all implementing regulations for the SES. This section would allow an agency to be excluded from SES by the President, but the agency would have to do so through OPM, with that Office making a recommendation to the President as to whether an exclusion is advisable. If the exclusion were granted, OPM could recommend to the President a revocation at any subsequent time.

The SES would be composed of career reserved positions for career appointees and general positions for career and non-career appointees. OPM would prescribe the position criteria and regulations governing the designation of career reserved positions. Also, OPM would have to approve the managerial qualifications of initial career appointees in such positions.

All agencies covered by SES would be required to submit to OPM requests for SES positions which would include program, budget, and workload breakdowns to justify each request. OPM, in consultation with the Office of Management and Budget, would then allocate the positions per agency, although OPM would reserve the right to reduce any allocation at will. Additionally, OPM would be required to submit a biennial report to the Congress which would reveal the numbers of SES positions in each Agency.

Lastly, the number of non-career appointees would be limited to 15 percent of SES positions Government-wide; these positions would be allocated biennially by OPM according to demonstrated need. OPM would reserve the right to make adjustments in allocations to meet any emergency needs.

The degree of OPM control over the allocation of SES positions allowed by section 402(b) would severely limit the adaptability of the CIA personnel system and hamper its functions and operations. Such OPM controls also conflicts with the statute establishing CIA's excepted personnel system (50 U.S.C. 403j). Further, the vast amount of detailed information which would have to be disclosed in order for the statutory scheme of SES to function would conflict with the DCI's statutory responsibilities under 50 U.S.C. 403(d)(3) and 50 U.S.C. 403g.

According to section 403, SES pay levels would be set according to OPM criteria. The section also would require that the staffing of SES career appointees be competitive, according to a process meeting OPM standards. Once a career executive is in place, that executive could not be involuntarily reassigned or transferred within 120 days after the appointment of an agency head. These restrictions present the same statutory conflicts raised by the provisions of section 402(b).

While the removal criteria set by section 404 for SES non-career employees is the functional equivalent of the DCI's termination authority (50 U.S.C. 403(c)), the removal criteria for career appointees does not include anything resembling this authority.

All agencies, unless excluded by the President from SES, would be required to create an SES performance appraisal system under section 405. If an appraisal system is not in conformity with OPM regulations, OPM could order corrective action. This also would conflict with the aforementioned statutory responsibilities of the DCI.

Both the suspension for 30 days or more of SES employees and their removal to promote the efficiency of the service are governed by the procedures of section 411. These procedures include a requirement of a 30 days' advance notice, a right to reply and representation, and an appeal to the Merit Board. This section then would result in more disclosures and statutory conflicts.

Title V concerns the merit pay plan for supervisory and managerial positions from GS-9 through GS-15. Section 501 would place all managers in grades 9 through 15 and non-managers in grades 16 through 18 under the coverage of a merit pay plan to be established by OPM and implemented by OPM regulations. Again, OPM control would conflict with existing statutes and would result in the removal of an important management tool.

The Agency has no comments on Title VI, Research and Demonstration Authority, and Title VII, Miscellaneous.

VIEWS OF THE CENTRAL INTELLIGENCE AGENCY ON THE CIVIL SERVICE COMMISSION REORGANIZATION PLAN OF 1978

Section 202(f) of the proposed Reorganization Plan gives the Special Counsel to the Merit Systems Protection Board (Merit Board) the general authority to receive and investigate allegations of reprisals against whistle-blowers, i.e., for lawful disclosures of information concerning the violation of laws and regulations. The Special Counsel is also given the authority to prescribe regulations governing the handling of such matters. These authorities would conflict with the oversight role of the Intelligence Oversight Board (IOB) as stated in Section 3-1 of Executive Order 12036; the Board was specially created in order to keep intelligence agency whistle-blowing within national security channels.

The procedures for implementing the Special Counsel's whistle-blowing authorities have been placed in Title II of the draft legislation and will be commented upon in our analysis of that title.

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THE DIRECTOR OF CENTRAL INTELLIGENCE

OLC 78-0487/b

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WASHINGTON, D. C. 20505

OLC RECORD COPY

Office of Legislative Counsel

20 March 1978

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

We have devoted considerable time in recent weeks to the Civil Service Reform legislation introduced in both Houses of Congress earlier this month (S. 2640 and H.R. 11280). Based on our report on the draft bill, submitted to the Office of Management and Budget on 17 February 1978, and subsequently transmitted to the Civil Service Commission, it was agreed that the Central Intelligence Agency should be exempted from all pertinent titles of the bill. We received assurances that this was intended and that the bill would be amended to reflect this before it was introduced. I would like to express our appreciation on your office's support.

On careful reading of the bill as introduced, however, it appears that the Agency's exemption from the bill is not as comprehensive as necessary or as intended. I would like to mention briefly our concerns.

In Title I, the CIA and other intelligence entities are exempt from only proposed section 2301 (section 101(a) of S. 2420, which would amend Title 5 United States Code), the Merit System Principles, and not from the other two sections. As noted in our report of 17 February 1978, it is necessary that this Agency be exempt from all of Title I. Our need for an exemption is based on the nature of intelligence operations and the need to maintain secrecy. The Agency's unique personnel system requires flexibility, and the oversight procedures as proposed in Title I would conflict with the current statutes which we believe was not intended. Furthermore, exemption from all of Title I is necessary to establish any exemption from the provisions referring to the Special Counsel in Title II.

In Title II, the CIA is exempted from Chapter 43, Performance Appraisal, and from subchapter I of Chapter 75 relating to short-term suspension (sections 203(a) and 204(a) of S. 2420, respectively, which would amend Title 5 United States Code). The Agency, however, is not exempt from subchapter II, Removal of Suspension, for more than 30 days (sections 7511-7514) as it affects preference eligibles in an Executive agency in the excepted service, which would include the CIA. These provisions of subchapter II would conflict with the Director's termination authority (50 U.S.C. 403(c)) and with the Director's mandate to prevent disclosure of sources and methods (50 U.S.C. 403(d)(3) and 403g). Similar conflicts are presented by Chapter 77, Appeals (section 205 of S. 2420), which, in addition, conflicts with the Agency's statutory exemption from the competitive service (50 U.S.C. 403j).

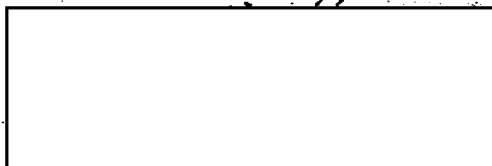
Also, in Title II, the Agency is not exempted from proposed Chapter 12 (section 202(a) of S. 2420, which would amend Title 5 United States Code); we are particularly concerned with those provisions relating to the Special Counsel (sections 1201 to 1207). As noted in our 17 February report, the authority of the Special Counsel would conflict with the oversight role of the Intelligence Oversight Board (IOB) as stated in Section 3-1 of Executive Order 12036. Furthermore, the procedures for implementing the Special Counsel's authorities (sections 1206 and 1207) would conflict with the Director's statutory authorities cited above, with the role of the IOB, and with CIA's excepted personnel system.

Moreover, CIA is not exempted from Title V which concerns Merit Pay. This title would result in OPM control and regulations which would raise statutory conflicts as noted above.

Regarding Title IV, the language which apparently is intended to exempt the CIA is not drawn as clearly as we believe necessary; the corresponding language in Title VI presents similar concern. In our view, every effort should be made to provide the clearest provisions possible concerning the scope of this important legislation.

Many of these concerns probably could be resolved by relatively minor adjustments to the language in the bill. I believe that it would be worthwhile for our staffs to meet on this matter, along with officers from the Civil Service Commission, to resolve these drafting problems.

Sincerely,



Acting Legislative Counsel

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OLC:YTF:sm (17 Mar 78)

THE WHITE HOUSE

WASHINGTON

March 7, 1978

Executive Registry
78-8409/2

DD/A Registry
78-545/7

Dear Admiral Turner:

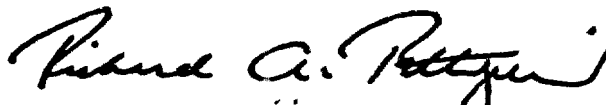
As you have no doubt seen in the news, the President's civil service reform proposals are both sweeping and controversial. This legislation will be one of the most important changes we can support to make the Federal Government work better.

To give you additional background information on this key proposal, I am sending you several documents:

1. The President's comments to the National Press Club announcing civil service reform.
2. White House Fact Sheet on civil service reform.
3. Civil Service Commission press release with more details on critical sections of the reorganization legislation and plan.

If you have any questions about this much-needed reform, please call me or my staff at: (202) 456-6730 or 456-2706. I would also ask you to fill out the enclosed card and return it to Presidential Personnel to update your records.

Sincerely,



Richard A. Pettigrew
Assistant to the President
for Reorganization

The Honorable Stansfield Turner
Director
Central Intelligence Agency
Washington, D.C.

Enclosures

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EXECUTIVE SECRETARIAT

Routing Slip

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SUSPENSE		31 MAR 78 Date			

Remarks:

To 2: Please review the DCI's copy of attached and comment to the DDCI on the impact, if any, on the Agency.

D/ [Signature]
Executive Secretary
16 MAR 78
Date

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

The President's Civil Service Reform Proposals

FROM:

John F. Blake
Deputy Director for Administration
7D-18, Hqs.

EXTENSION:

NO.

DATE

TO: (Officer designation, room number, and building)

DATE

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COMMENTS (Number each comment to whom. Draw a line across column after each comment.)

1. Executive Registry
7E-12, Hqs.

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COMMENTS - For Information

2.

3. Deputy Director of
Central Intelligence
7E-12, Hqs.

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